

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 5, 2014**

Diane M. Fremgen  
Clerk of Court of Appeals

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**Appeal No. 2013AP2295**

**Cir. Ct. No. 2012CV4559**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**METROPOLITAN PLACE APARTMENTS, LLC,**

**PLAINTIFF-APPELLANT,**

**v.**

**METROPOLITAN PLACE RESIDENTIAL CONDOMINIUM OWNERS  
ASSOCIATION, INC. AND METROPOLITAN PLACE PARKING  
CONDOMINIUM OWNERS ASSOCIATION, INC.,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from a judgment of the circuit court for Dane County:  
C. WILLIAM FOUST, Judge. *Affirmed.*

Before Sherman, Kloppenburg and Stark, JJ.

¶1 SHERMAN, J. Metropolitan Place Apartments, LLC, appeals summary judgment entered in favor of the Metropolitan Place Residential Condominium Owners Association, Inc., and the Metropolitan Place Parking

Condominium Owners Association (collectively, the Associations) on the issue of whether a parking easement granting the residents of Metropolitan Place Apartments the right to park in the Metropolitan Place Parking Condominium, a parking structure, is valid. The circuit court determined on summary judgment that the easement was not valid and granted summary judgment in favor of the Associations. For the reasons discussed below, we affirm the circuit court's determination that summary judgment is appropriate in this case, but do so for reasons different than those articulated by the circuit court.

### **BACKGROUND**

¶2 The following facts are taken from the summary judgment submissions. In November 2012, Metropolitan Place Apartments brought suit against the Associations seeking a declaratory judgment that an easement granting the Apartments' residents parking rights within the Metropolitan Place Parking Condominium is valid and enforceable. The easement in question was given in January 2008 by Metropolitan Place Parking Condominium Owners Association, while under the declarant control of Buckingham LLC, an entity wholly owned and controlled by Cliff Fischer. Fischer was and is also the sole owner of Metropolitan Place Apartments and was the sole owner of Metropolitan Place Development, LLC, the entity that developed both the Metropolitan Place Residential Condominium and the Metropolitan Place Parking Condominium. The unit owners of Metropolitan Place Condominium and Metropolitan Place

Parking Condominium are members of the Associations.<sup>1</sup> The easement permitted tenants residing and doing business at Metropolitan Place Apartments the right to park along essentially the entrance ramp, a common area, of the Metropolitan Place Parking Condominium.

¶3 Buckingham turned over control of the Associations to the condominium unit owners in 2009. In 2012, Metropolitan Place Apartments' attorney contacted the Associations and demanded access by the tenants of Metropolitan Place Apartments to parking along the entrance ramp of the Metropolitan Place Parking Condominium, a right to which Metropolitan Place Apartments claimed its tenants were entitled under the 2008 easement. The Associations responded that the easement was void, but that to the extent that it was valid, the Metropolitan Place Parking Condominium Owners Association intended to record a termination of easement in ninety days. Thereafter, in December 2012, approximately one month after the Metropolitan Place Apartments filed the present declaratory action, the Metropolitan Place Parking Condominium Owners Association recorded a termination of the easement.

¶4 In March 2013, the Associations moved the circuit court for summary judgment on the issue of whether the easement was validly terminated.

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<sup>1</sup> The Metropolitan Place Residential Condominiums and the Metropolitan Place Parking Condominiums were declared as expandable condominiums in 2001 and initial sales of those units began in 2003. WISCONSIN STAT. ch. 703 establishes the requirements for creating and operating condominiums in Wisconsin. WISCONSIN STAT. § 703.03 requires that the owners(s) of property execute and record a declaration to create a condominium. A “[d]eclaration” is defined as “the instrument by which a property becomes subject to this chapter ....” WIS. STAT. § 703.02(8). The person who creates a condominium by subjecting property to a condominium declaration is referred to as the “[d]eclarant.” WIS. STAT. § 703.02(7).

All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

The circuit court granted the Associations’ motion. In a written decision, the court determined that the easement was not valid “because neither Fisher nor any of his LLCs had the authority to grant an easement that was not for the benefit of the residential condominium.” The court further stated:

I can’t begin to imagine how facilitating Fisher’s apartment LLC in levying parking fees for the use of the residential parking condo in any way benefits the residential condo association. It takes parking spaces away from the use of condo owners and their guests. In very simple terms, Fisher sold the property once to the condo owners and now claims he can rent the same property out to his apartment dwellers.

In reaching its determination, the court relied on a provision of the Metropolitan Place Parking Condominium’s Declaration, which addressed the Declarant’s duties *after* the condominium association was no longer under Declarant control. Metropolitan Place Apartments appeals.

## DISCUSSION

¶5 Metropolitan Place Apartments contends that the circuit court erred in granting the Associations’ motions for summary judgment on the issue of whether the 2008 easement was validly terminated by Metropolitan Place Parking Condominium Owners Association. Metropolitan Place Apartments argues first that the circuit court erroneously relied on an inapplicable provision of the Metropolitan Place Parking Condominium’s declaration. Metropolitan Place Apartments also argues that the Associations claimed they were terminating the easement under WIS. STAT. § 703.35, which addresses the termination of certain contracts and leases entered into before an association is controlled by the unit owners, but that § 703.35 does not authorize a condominium association to

terminate an easement granted by a condominium association while under Declarant control.

¶6 The Associations argue that summary judgment was appropriate because the Declarant exceeded its authority in granting the easement, which did not benefit the Association, but instead benefitted the Declarant's owner, Fischer. The Associations also argue that the easement is not valid because: (1) it violated WIS. STAT. § 703.15(2)(c) in that it effectively gave the Declarant control, in perpetuity, of a portion of the common element of Metropolitan Place Parking Condominium; and (2) the Declarant did not have authority under the Metropolitan Place Parking Condominium's Declaration, nor any statute, to give away a common element. Finally, the Associations argue that they had the authority to terminate the easement pursuant to WIS. STAT. § 703.35.

¶7 We review a circuit court's grant of summary judgment independently of the determinations rendered by the circuit court. *Park Bank v. Westburg*, 2013 WI 57, ¶36, 348 Wis. 2d 409, 832 N.W.2d 539. Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2). We may affirm a circuit court's grant of summary judgment on different grounds than those relied on by the circuit court. See *International Flavors & Fragrances, Inc. v. Valley Forge Ins. Co.*, 2007 WI App 187, ¶23, 304 Wis. 2d 732, 738 N.W.2d 159. To the extent that resolution of whether summary judgment in favor of the Associations calls for the interpretation of those documents governing the Associations, our review is de novo. See *Solowicz v. Forward Geneva Nat'l, LLC*, 2010 WI 20, ¶13, 323 Wis. 2d 556, 780 N.W.2d 111 (interpretation of a written document affecting land is also a question of law that we review independently of the circuit court).

¶8 The record before us contains only an undated excerpt of the Metropolitan Place Parking Condominium Declaration, which pertains to that condominium’s association. This excerpt sets forth the Declarant’s rights while in control of that condominium’s association and the rights of the association after the Declarant’s control is terminated. The Declaration provides in relevant part:

6.02 Declarant Control. Except as provided in Section 703.15(2)(d), Wisconsin Statutes, as amended, Declarant reserves the right ... to exercise the powers and responsibilities of the Association, its members, and its directors until the earlier of either of the following shall occur: (i) expiration of ten (10) years from the date[] the first Unit is conveyed by the Declarant to any person other than the Declarant; or (ii) thirty (30) days after conveyance of seventy-five percent (75%) of the Common Elements to purchasers of Units in the Condominium. During this period, Declarant shall have the full and exclusive right to take all action on behalf of the Association, including but not limited to, the right to ... (c) grant easements ....

6.03 Termination of Declarant Control. Upon termination of the above-specified period, or upon the earlier, voluntary relinquishment of control by Declarant, control of the Association shall be turned over to the Unit Owners. Notwithstanding any provision to the contrary, Declarant reserves the following rights: ... Declarant shall also have the right to grant easements over, through, or under any part of the Condominium *for the benefit of the Condominium* as a whole or any part thereof. (Emphasis added).

¶9 The circuit court in this case concluded that the easement was void because Buckingham did not have authority to grant an easement that did not benefit the Metropolitan Place Parking Condominium Owners Association. The court cited the following language from section 6.03 of the Metropolitan Place Parking Condominium Declaration: “Declarant shall also have the right to grant easements over, through, or under any part of the Condominium for the benefit of the Condominium as a whole or any part thereof.” Metropolitan Place Apartments argues that the circuit court’s reliance on section 6.03 was misplaced because that

section addresses the Declarant's rights and obligations upon the termination of the Declarant's control, but the easement at issue here was given prior to the termination of the Declarant's control. The Associations do not dispute Metropolitan Place Apartments' claim that section 6.03 addresses the Declarant's rights and obligations only upon termination of the Declarant's control. The Associations argue, however, that section 6.03 is relevant in terms of "setting parameters for the scope of the authority that may be exercised by the Declarant under [s]ection 6.02."

¶10 We assume, without deciding, that Metropolitan Place Apartments is correct that the reliance on section 6.03 of the Declaration was misplaced. However, for the reasons explained below, we conclude that the circuit court was nevertheless correct in concluding that the easement was void.

¶11 Section 6.02 of the Metropolitan Place Parking Condominium Declaration addresses the Declarant's rights and obligations while the Metropolitan Place Parking Condominium Owners Association remained under Declarant control. Section 6.02 provides in pertinent part that while the Association remains under Declarant's control, "Declarant shall have the full and exclusive right to take all action *on behalf of* the Association, including but not limited to, the right to ... (c) grant easements." (Emphasis added.) The Associations argue that "on behalf of the Association" qualifies Declarant's control and that any actions taken "on behalf of the Association" were required to have been taken for the benefit of the Metropolitan Place Parking Condominium Owners Association. We agree.

¶12 On the record before us it does not appear that the phrase "on behalf of" is defined in the Declaration. The parties have also not directed us to any legal

authority, either statutory or judicial, addressing the meaning of the phrase “on behalf of” in the context of a Declarant’s actions while in control of a condominium association. We look, therefore, to the dictionary definition to ascertain the common meaning of a term or phrase. See *Garcia v. Mazda Motor of Am., Inc.*, 2004 WI 93, ¶14, 273 Wis. 2d 612, 682 N.W.2d 365 (using dictionary to discern meaning of undefined word).

¶13 When “behalf” is used as a preposition, such as when used in the prepositional phrase “on behalf of,” the word “behalf” is defined as “in the interest of: as the representative of: for the benefit of.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 198 (1993). We have previously recognized that the words “on behalf of” commonly mean “for the benefit of.” See *State ex rel. Collins v. Cooke*, 2000 WI App 101, ¶6, 235 Wis. 2d 63, 611 N.W.2d 774. Although *Cooke* discussed the meaning of the words “on behalf of” in a different context than that presented in the present case, we see no reason that the common meaning of the words is not equally applicable here. Accordingly, we conclude that in this case, the Declarant had the right to grant easements while the Association was under Declarant control provided such easements were for the benefit of the Association.

¶14 The record in this case reflects that it is undisputed that Fischer was the owner of both the Declarant, Buckingham, and the Metropolitan Place Apartments. The easement at issue in this case conveyed to the tenants of the Metropolitan Place Apartments the right to utilize parking spaces located within the Metropolitan Place Parking Condominium. The easement clearly benefited the tenants of Metropolitan Place Apartments and the Apartments’ owner, Fischer. However, there is no evidence in the record from which it can be reasonably inferred that the easement in any way benefited the Metropolitan Place Parking

Condominium Owners Association or its members. There is no evidence that the Metropolitan Place Condominium unit owners were compensated in any way for the usage of the parking spots by the Apartments' tenants, nor is there any evidence that the unit owners are otherwise benefited by that usage. Although we draw all reasonable inferences in favor of the party against whom summary judgment is sought, *see Burbank Grease Servs., LLC v. Sokolowski*, 2006 WI 103, ¶40, 294 Wis. 2d 274, 717 N.W.2d 781, there is no evidence here from which such inference can be drawn in favor of Metropolitan Place Apartments. Because the evidence on summary judgment does not permit an inference that the Metropolitan Place Parking Condominium Owners Association or the unit members were or are benefitted by the easement, we conclude that Buckingham did not have authority under provision 6.02 of the Declaration for the Metropolitan Place Parking Condominium Owners Association to convey the easement at the time that the Metropolitan Place Parking Condominium Owners Association was under Buckingham's control. Accordingly, we conclude that the easement was not validly granted, and that summary judgment in favor of the Associations was proper.<sup>2</sup>

## CONCLUSION

¶15 For the reasons discussed above, we affirm the circuit court's decision on summary judgment.

*By the Court.*—Judgment affirmed.

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<sup>2</sup> Because we conclude that the easement was not validly granted and that summary judgment was appropriate for that reason, we need not and do not address the other arguments raised by the parties in their appellate briefs.

Not recommended for publication in the official reports.

